

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
BARRY FITZGERALD,

Plaintiff,

-against-

SODEXO INC. and NY PRESBYTERIAN
QUEENS,

Defendants.

-----X
POLLAK, United States Magistrate Judge:

ORDER
22 CV 3410 (AMD) (CLP)

On July 26, 2023, this Court entered an Order¹ instructing plaintiff Barry Fitzgerald to respond to defendants Sodexo Inc.’s and NY Presbyterian Queens’ interrogatories by August 31, 2023. (ECF No. 29). That Order also admonished plaintiff that “[f]ailure to provide responses to defendants’ interrogatories could result in this Court making a recommendation to dismiss this matter for plaintiff’s failure to prosecute,” and ordered defendants to file a status report by October 6, 2023. (Id.)

On October 6, 2023, defendants filed a status report² indicating that plaintiff failed to provide defendants with his interrogatory responses by August 31, 2023. (ECF No. 30 at 1). Plaintiff purportedly provided defendants with a signed copy of the verification page that was included with defendants’ interrogatories, but not responses to the interrogatories themselves. (Id.) Defendants further note that plaintiff has not provided responses to “most of the requests in Defendants’ First Request for Production of Documents,” and that as a result of these failures, the parties have been unable to schedule depositions as they were Ordered to do. (Id. at 2).

¹ A copy of this Court’s July 26th Order is attached hereto as Appendix A.

² A copy of defendants’ October 6th letter is attached hereto as Appendix B.

Plaintiff also has not been responsive to defendant's inquiries. Defendants represent that they attempted to contact plaintiff on September 1, 2023, to no avail. (Id.)

In light of the above, the parties are hereby ORDERED to appear for a conference before this Court on October 26, 2023 to discuss the issues raised in defendants' letter. The conference will proceed as follows:

DATE: **October 26, 2023**

TIME: **9:45 AM**

LOCATION: Telephone conference will proceed via AT&T conference call.

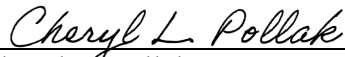
Please dial 877-336-1839 at 9:45 AM.

Enter Access code: 380-1746
and security code: 22-3410

Plaintiff is reminded that continued failure to comply with his discovery obligations may result in this Court recommending that his case be dismissed for failure to prosecute.

SO ORDERED.

Dated: Brooklyn, New York
October 19, 2023



Cheryl L. Pollak
United States Magistrate Judge
Eastern District of New York

APPENDIX A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
BARRY FITZGERALD,

Plaintiff,

-against-

SODEXO INC., *et al.*,

Defendants.

-----X
POLLAK, United States Magistrate Judge:

ORDER
22 CV 3410 (AMD) (CLP)

On July 20, 2023, plaintiff, appearing *pro se*, and defendants' counsel appeared for a status conference before Magistrate Judge Cheryl L. Pollak. Defendants are Ordered to re-serve their interrogatories on plaintiff. Plaintiff must respond to the interrogatories by **August 31, 2023**. Failure to provide responses to defendants' interrogatories could result in this Court making a recommendation to dismiss this matter for plaintiff's failure to prosecute. After plaintiff responds, the parties should proceed with depositions.

Defendants are also Ordered to re-send plaintiff a HIPAA authorization for BMCC records. Defendant should submit a status report by **October 6, 2023**, updating the Court on the status of discovery.

A status conference is set as follows:

DATE:	November 22, 2023
TIME:	10:15 a.m.
LOCATION:	Status Conference will proceed via AT&T conference call.
	Please dial 877-336-1839 at 10:15 a.m.
	Enter Access code: 380-1746 and security code: 22-3410

The Clerk is directed to send copies of this Order to the parties either electronically through the Electronic Case Filing (ECF) system or by mail. Enclosed with this Order is a flyer for the Federal Pro Se Legal Assistance Project.¹

SO ORDERED.

Dated: Brooklyn, New York
July 26, 2023

/s/ Cheryl L. Pollak
Cheryl L. Pollak
United States Magistrate Judge
Eastern District of New York

¹ The clinic can also be contacted through their website:
<https://www.citybarjusticecenter.org/projects/federal-pro-se-legal-assistance-project/>

APPENDIX B

MY DIRECT DIAL IS: (631) 247-4666

MY EMAIL ADDRESS IS: WILLIAM.KANG@JACKSONLEWIS.COM

October 6, 2023

VIA ECF

Honorable Cheryl L. Pollak
United States District Court, Eastern District of New York
225 Cadman Plaza East
Courtroom 13B - South
Brooklyn, New York 11201

Re: *Fitzgerald v. Sodexo Inc., et al.*,
Case No.: 22-cv-3410 (AMD) (CLP)

Dear Judge Pollak:

We represent Defendants Sodexo Inc. (“Sodexo”) and NewYork-Presbyterian/Queens, incorrectly sued herein as “NY Presbyterian Queens,” (“NYPQ”) (collectively “Defendants”), in the above-referenced matter. Pursuant to the Court’s Order dated July 26, 2023 (“July 26 Order”), we respectfully submit this status report.

As the Court is aware, Defendants were Ordered in the July 26 Order to re-serve their interrogatories on Plaintiff and Plaintiff was Ordered to respond to the interrogatories by August 31, 2023. The July 26 Order states that “[f]ailure to provide responses to defendants’ interrogatories could result in this Court making a recommendation to dismiss this matter for plaintiff’s failure to prosecute.” Defendants were also ordered to re-send Plaintiff a HIPAA authorization for BMCC records.

Defendants have complied with the July 26 Order by re-serving their interrogatories and document requests via email and regular mail on July 26, 2023, which included copies of HIPAA authorizations for Community Counseling & Mediation (“CCM”) and Sunrise Medical Group – Maimonides Medical Center (“Sunrise”).¹

On August 25, 2023, the undersigned received documents in the mail from Plaintiff, but the documents did *not* contain Plaintiff’s responses to Defendants’ interrogatories. Instead, Plaintiff provided only a signed copy of the Verification page that was included with Defendants’ interrogatories, without including any responses.

¹ Plaintiff stated during the conference held with the Court on July 20, 2023, that he received mental health treatment from “BMCC” located at 535 Clinton Avenue, Brooklyn, New York. However, we were unable to find any mental healthcare provider with the name “BMCC” at that address. In an abundance of caution, we prepared HIPAA authorizations addressed to CCM and Sunrise, which were the only mental healthcare providers we were able to identify located at 535 Clinton Avenue. We confirmed with CCM over the telephone that Plaintiff has visited CCM as a patient.

The documents we received on August 25 also included Plaintiff's signed authorizations for CCM and Sunrise, which we promptly sent to those healthcare providers with our requests for Plaintiff's medical records. To date, we have not received Plaintiff's medical or mental health records from CCM and we received a response from Sunrise stating that it had no records for Plaintiff.²

Defendants sent a deficiency letter to Plaintiff on September 1, 2023, by email and regular mail, requesting Plaintiff's responses to Defendants' interrogatories and to most of the requests in Defendants' First Request for Production of Documents. We have not received any response from Plaintiff.

The July 26 Order states, "After plaintiff responds, the parties should proceed with depositions." However, because Plaintiff has failed to provide responses to the interrogatories or to most of Defendants' document requests, we are unable to proceed with scheduling Plaintiff's deposition.

We plan to address the deficiencies in Plaintiff's discovery responses, including his failure to provide responses to Defendants' interrogatories as he was Ordered to in the July 26 Order, at the status conference scheduled for November 22, 2023, unless the Court wishes for us to address them sooner.

We thank the Court for its attention to this matter.

Respectfully submitted,

JACKSON LEWIS P.C.

William Kang

William Kang

cc.: Barry Fitzgerald (via regular mail and email)

² We have followed up with CCM and were told that we would be receiving Plaintiff's records shortly.